

## **Wisconsin Court Interpreter Program Guidelines for Determining Need and Working with Deaf Interpreters<sup>i</sup>**

---

### **WHAT IS A DEAF INTERPRETER?**

A Deaf interpreter (or deaf intermediary interpreter) is a person who is deaf or hard of hearing and is considered a specialist because he or she possesses a unique mastery of American Sign Language (ASL) and use of visual-gestural language that allows him or her to work with Deaf people in settings where communication issues are complex and/or high risk. Most Deaf interpreters work as part of a team with a sign language interpreter who can hear.

### **WHEN WOULD A DEAF PARTY OR WITNESS REQUIRE A DEAF INTERPRETER?**

If one or more of these characteristics is present, the court should consider appointing a Deaf interpreter for the Deaf party or witness:

- ⇒ Mental illness or learning disabilities
- ⇒ Secondary disabilities, e.g. deaf-blindness or vision impairment
- ⇒ Cognitive problems as a result of substance abuse
- ⇒ Deaf minors whose language has not been fully developed
- ⇒ Little or no contact with ASL resulting in underdeveloped or non-existent ASL skills
- ⇒ Upbringing in a bilingual home/school environment, e.g. Deaf children born into Spanish-speaking homes who lip-read and hear Spanish until entering public school where they are exposed to lip-reading and hearing English accompanied by non-standard idiosyncratic signs or gestures commonly referred to as “home signs” which are unique to the family
- ⇒ Upbringing in another country and who may or may not have knowledge of a foreign sign language
- ⇒ Limited or no formal education
- ⇒ Social isolation in both the hearing and deaf worlds

### **WHO MAKES A DETERMINATION AS TO THE NEED FOR A DEAF INTERPRETER?**

Under Wis. Stat. 885.38(3)(a), the court must make the determination as to whether a litigant needs interpreting services once the court is put on notice.<sup>ii</sup> Sometimes the deaf person requiring interpreter services will inform the court he or she needs a Deaf interpreter. However, the request for a Deaf interpreter might also come from the sign interpreter who has been assigned to the particular case.

### **HOW SHOULD THE COURT DETERMINE WHETHER A DEAF INTERPRETER IS NEEDED?**

With a sign interpreter present, the court should engage in a *voir dire* with the deaf person to determine factors that exist which might necessitate the use of a Deaf interpreter. The judge should:

- ⇒ Ask open-ended questions to try to elicit a narrative response, such as:
  1. Where did you go to school?
  2. Where did you grow up? Ask about family members.
  3. What kind of work do you do?
  4. Describe something in the courtroom
  5. Ask about a current event where the person describes the event
 Confusing gaps in description or problems with timelines may indicate a Deaf interpreter is needed
- ⇒ Ask him or her to state back any instructions to determine understanding

### **IS THE COURT REQUIRED TO VOIR DIRE THE DEAF INTERPRETER?**

Yes. The court should conduct a *voir dire* of the Deaf interpreter to ascertain qualifications, the reasons he or she is present and to determine whether he or she has any familiarity with the parties.

**Note:** One reason a Deaf interpreter is present is because of his/her familiarity with non-standard language usage and the close-knit nature of deaf people within that community. Because of the limited number of Deaf interpreters, the Deaf interpreter is likely to have had prior contacts with the parties. The court should instruct both the hearing and the Deaf interpreter to abide by the Code of Ethics and their oath.

### **HOW IS A DEAF INTERPRETER USED?<sup>iii</sup>**

As mentioned earlier, a Deaf interpreter usually works as part of Deaf-hearing interpreting team. The placement in the courtroom will be different from when spoken language interpreters are used and will vary with courtroom.

#### Positioning at Counsel Table:

- ⇒ The Deaf interpreter usually sits directly facing the deaf litigant with his/her back to the judge
- ⇒ The hearing sign interpreter is generally positioned slightly behind and off to one side of the deaf litigant

#### Positioning at Witness Stand:

- ⇒ The Deaf interpreter usually sits or stands in front of the deaf witness with his/her back to the attorneys
- ⇒ The hearing sign interpreter is generally positioned slightly behind and off to one side of the deaf witness

**Note:** During jury trials the court should make sure the Deaf interpreter is not blocking the jury's view of the witness.

#### The interpretation process:

- ⇒ The process is similar to relay interpretation.
- ⇒ The hearing sign interpreter takes the spoken English and uses ASL to interpret to the Deaf interpreter. This can be done in the consecutive or simultaneous mode.
- ⇒ The Deaf interpreter will convey the information to the deaf litigant or witness using a variety of visual/gestural communication techniques. This is usually done in the consecutive mode.
- ⇒ Any information rendered to the Deaf interpreter by the deaf litigant or witness will be interpreted to the hearing sign interpreter by the Deaf interpreter using ASL. This is usually done in the consecutive mode.
- ⇒ The hearing sign interpreter will render the message to the court in spoken English.

#### Other Considerations:

- ⇒ Be prepared for the hearing to take extra time so make sure to schedule additional time for each hearing.
- ⇒ Make every effort to use the same interpreting team as possible throughout the case.
- ⇒ The Deaf interpreter may need to use additional objects to facilitate communication such as paper and pencils for drawing, calendars, clocks, and pictures to supplement his/her gestures and signs, and other props relevant to the case (e.g. dolls, toy cars).
- ⇒ It will be necessary to appoint more than one Deaf-hearing team if it is for a trial or a hearing expected to last longer than 4 hours (see Guide on Team Interpreting)

### **IS THERE CERTIFICATION FOR DEAF INTERPRETERS?**

Yes. While the Director of State Courts does not certify sign interpreters, we recognize credentials obtained through the Registry of Interpreters for the Deaf (RID) which is the entity that certifies all sign interpreters. In Wisconsin, Deaf interpreters are listed on the roster of interpreters as Certified if they hold a specialist certificate called a Conditional Legal Interpreting Permit-Relay or CLIP-R. Deaf interpreters are listed on the roster as Provisional if they hold a generalist certificate which is a Certified Deaf Interpreter (CDI) from RID. Deaf interpreters must also hold a license from the Department of Safety and Professional Services under 440.

## **HOW DOES THE COURT LOCATE A DEAF INTERPRETER?**

As mentioned earlier, there are a very small number of qualified Deaf interpreters across the country. There are several Deaf interpreters listed on Wisconsin's roster. In addition, a hearing sign interpreter may have access to Deaf interpreters whom he or she works with and may be able to provide names to the court. The link for the roster is:

<http://wicourts.gov/services/interpreter/search.htm>

---

<sup>i</sup> This guide was compiled using several resources which include "Deaf Interpreters in Court: An accommodation that is more than reasonable," Carla Mathers (March 2009), The National Consortium for Interpreter Education Centers; "Deaf Interpreters as Reasonable Accommodation" The National Consortium for Interpreter Education Centers © 2010; "Use of a Certified Deaf Interpreter," Registry of Interpreters for the Deaf (RID) Standard Practice Paper © 1997; "Recommended Guidelines for the Use of Deaf Intermediary Interpreters," Judicial Council of California/Administrative Office of the Courts © 2010.

<sup>ii</sup> State v. Xiong Yang, 201 Wis. 2d 721, 549 N.W. 2d 769 (Ct. App. 1996)

<sup>iii</sup> "Guidelines for Proceedings that involve Deaf persons who do not communicate competently in American Sign Language," Language Services Section, Special Programs Unit, New Jersey Administrative Office of the Courts (February 2004)